

AMENDED IN SENATE APRIL 14, 2011

SENATE BILL

No. 375

Introduced by Senator Wright

February 15, 2011

An act to amend Sections ~~7541 and 7570~~ of 7541, 7570, 7575, and 7630 of, and to add Section 7646.5 to, the Family Code, relating to paternity.

LEGISLATIVE COUNSEL'S DIGEST

SB 375, as amended, Wright. Paternity.

Existing law establishes a *conclusive* presumption that a man is the natural father of a child if he and the natural mother of the child are married and the child is born during the marriage, *or if he signs a voluntary declaration of paternity, as provided*. Under existing law, ~~this presumption~~ *these presumptions* of paternity may be rebutted by genetic evidence that another man is the biological father of the child. Existing law requires that a motion for genetic tests be filed not later than 2 years after the birth of the child, *as specified*.

This bill would, *notwithstanding those provisions*, authorize a presumed father to file a motion for genetic tests within ~~a reasonable time~~ 2 years after he becomes aware of facts that lead him to reasonably believe that he may not be the biological father of the child.

Existing law provides that, except as to cases in which paternity is presumed under the conclusive presumption described above, specified persons, including a man alleged or alleging himself to be the father, may bring an action to determine the existence of the father and child relationship.

This bill would delete that exception, thereby authorizing those persons to bring an action to determine the existence of the father and

child relationship in a case in which another man is presumed to be the father.

Existing law declares that there is a compelling state interest in determining paternity for all children.

This bill would instead declare that there is compelling state interest in determining biological paternity for all children, and would further declare that establishing paternity for biological fathers would increase respect for the judicial system.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Genetic testing, using DNA evidence, is recognized as
4 scientifically valid by the courts of this country.

5 (b) In the year 2000, the State of California recognized the
6 validity of DNA testing and created a procedure for an individual
7 convicted of certain crimes to petition a court to reopen his or her
8 case in order to reevaluate DNA evidence.

9 (c) A man who is adjudicated to be the father of a child by a
10 court in a paternity action when he is not actually the biological
11 father of the child may be financially liable for up to 18 years of
12 child support.

13 (d) The American Association of Blood Banks reported that out
14 of a total of more than 280,000 cases evaluated in 1999, almost
15 30 percent of the genetic samples excluded the tested individual
16 as the biological father.

17 (e) Thirty-seven states have more liberal and flexible statutes
18 than California and allow for paternity to be reevaluated using
19 DNA evidence.

20 (f) Data from the Department of Child Support Services shows
21 that judgments in more than 87 percent of cases challenging
22 paternity during a two-year period were established by default.

23 (g) Respect for the judicial system is greatly diminished when
24 the laws are inconsistent with regard to the use of scientifically
25 valid DNA testing and do not permit the correction of an injustice
26 in a paternity action, but do allow it in a criminal proceeding.

27 SEC. 2. Section 7541 of the Family Code is amended to read:

1 7541. (a) Notwithstanding Section 7540, if the court finds that
2 the conclusions of all the experts, as disclosed by the evidence
3 based on blood tests performed pursuant to Chapter 2 (commencing
4 with Section 7550), are that the husband is not the father of the
5 child, the question of paternity of the husband shall be resolved
6 accordingly.

7 (b) ~~(1) The~~ *Except as provided in Section 7646.5, the* notice of
8 motion for blood tests under this section may be filed not later
9 than two years from the child's date of birth by the husband, or
10 for the purposes of establishing paternity by the presumed father
11 or the child through or by the child's guardian ad litem. As used
12 in this subdivision, "presumed father" has the meaning given in
13 Sections 7611 and 7612.

14 ~~(2) Notwithstanding paragraph (1), a motion for blood tests may~~
15 ~~be filed by the husband within a reasonable time after he becomes~~
16 ~~aware of facts that lead him to reasonably believe that he is not~~
17 ~~the biological father of the child.~~

18 (c) The notice of motion for blood tests under this section may
19 be filed by the mother of the child not later than two years from
20 the child's date of birth if the child's biological father has filed an
21 affidavit with the court acknowledging paternity of the child.

22 (d) The notice of motion for blood tests pursuant to this section
23 shall be supported by a declaration under oath submitted by the
24 moving party stating the factual basis for placing the issue of
25 paternity before the court.

26 (e) Subdivision (a) does not apply, and blood tests may not be
27 used to challenge paternity, in any of the following cases:

28 (1) A case that reached final judgment of paternity on or before
29 September 30, 1980.

30 (2) A case coming within Section 7613.

31 (3) A case in which the wife, with the consent of the husband,
32 conceived by means of a surgical procedure.

33 SEC. 3. Section 7570 of the Family Code is amended to read:
34 7570. The Legislature hereby finds and declares as follows:

35 (a) There is a compelling state interest in establishing biological
36 paternity for all children. Establishing paternity is the first step
37 toward a child support award, which, in turn, provides children
38 with equal rights and access to benefits, including, but not limited
39 to, social security, health insurance, survivors' benefits, military
40 benefits, and inheritance rights. Knowledge of family medical

1 history is often necessary for correct medical diagnosis and
2 treatment. Knowing one's biological father is important to a child's
3 development. Additionally, establishing paternity for the biological
4 father creates respect for the judicial system, while imposing the
5 financial obligation of child support on a party who medical
6 evidence has established is not the biological father generates
7 disrespect for the courts. ~~Courts are inherently limited to~~
8 ~~establishing financial obligations; they are not capable of~~
9 ~~mandating the maintenance of family relationships.~~

10 (b) A simple system allowing for establishment of voluntary
11 paternity will result in a significant increase in the ease of
12 establishing paternity, a significant increase in paternity
13 establishment, an increase in the number of children who have
14 greater access to child support and other benefits, and a significant
15 decrease in the time and money required to establish paternity due
16 to the removal of the need for a lengthy and expensive court
17 process to determine and establish paternity and is in the public
18 interest.

19 *SEC. 4. Section 7575 of the Family Code is amended to read:*

20 7575. (a) Either parent may rescind the voluntary declaration
21 of paternity by filing a rescission form with the Department of
22 Child Support Services within 60 days of the date of execution of
23 the declaration by the attesting father or attesting mother,
24 whichever signature is later, unless a court order for custody,
25 visitation, or child support has been entered in an action in which
26 the signatory seeking to rescind was a party. The Department of
27 Child Support Services shall develop a form to be used by parents
28 to rescind the declaration of paternity and instruction on how to
29 complete and file the rescission with the Department of Child
30 Support Services. The form shall include a declaration under
31 penalty of perjury completed by the person filing the rescission
32 form that certifies that a copy of the rescission form was sent by
33 any form of mail requiring a return receipt to the other person who
34 signed the voluntary declaration of paternity. A copy of the return
35 receipt shall be attached to the rescission form when filed with the
36 Department of Child Support Services. The form and instructions
37 shall be written in simple, easy to understand language and shall
38 be made available at the local family support office and the office
39 of local registrar of births and deaths. The department shall, upon
40 written request, provide to a court or commissioner a copy of any

1 rescission form filed with the department that is relevant to
2 proceedings before the court or commissioner.

3 (b) (1) Notwithstanding Section 7573, if the court finds that
4 the conclusions of all of the experts based upon the results of the
5 genetic tests performed pursuant to Chapter 2 (commencing with
6 Section 7550) are that the man who signed the voluntary
7 declaration is not the father of the child, the court may set aside
8 the voluntary declaration of paternity unless the court determines
9 that denial of the action to set aside the voluntary declaration of
10 paternity is in the best interest of the child, after consideration of
11 all of the following factors:

12 (A) The age of the child.

13 (B) The length of time since the execution of the voluntary
14 declaration of paternity by the man who signed the voluntary
15 declaration.

16 (C) The nature, duration, and quality of any relationship between
17 the man who signed the voluntary declaration and the child,
18 including the duration and frequency of any time periods during
19 which the child and the man who signed the voluntary declaration
20 resided in the same household or enjoyed a parent-child
21 relationship.

22 (D) The request of the man who signed the voluntary declaration
23 that the parent-child relationship continue.

24 (E) Notice by the biological father of the child that he does not
25 oppose preservation of the relationship between the man who
26 signed the voluntary declaration and the child.

27 (F) The benefit or detriment to the child in establishing the
28 biological parentage of the child.

29 (G) Whether the conduct of the man who signed the voluntary
30 declaration has impaired the ability to ascertain the identity of, or
31 get support from, the biological father.

32 (H) Additional factors deemed by the court to be relevant to its
33 determination of the best interest of the child.

34 (2) If the court denies the action, the court shall state on the
35 record the basis for the denial of the action and any supporting
36 facts.

37 (3) (A) ~~The~~ *Except as provided in Section 7646.5, the* notice
38 of motion for genetic tests under this section may be filed not later
39 than two years from the date of the child's birth by a local child
40 support agency, the mother, the man who signed the voluntary

1 declaration as the child's father, or in an action to determine the
2 existence or nonexistence of the father and child relationship
3 pursuant to Section 7630 or in any action to establish an order for
4 child custody, visitation, or child support based upon the voluntary
5 declaration of paternity.

6 (B) The local child support agency's authority under this
7 subdivision is limited to those circumstances where there is a
8 conflict between a voluntary acknowledgment of paternity and a
9 judgment of paternity or a conflict between two or more voluntary
10 acknowledgments of paternity.

11 (4) The notice of motion for genetic tests pursuant to this section
12 shall be supported by a declaration under oath submitted by the
13 moving party stating the factual basis for putting the issue of
14 paternity before the court.

15 (c) (1) Nothing in this chapter shall be construed to prejudice
16 or bar the rights of either parent to file an action or motion to set
17 aside the voluntary declaration of paternity on any of the grounds
18 described in, and within the time limits specified in, Section 473
19 of the Code of Civil Procedure. If the action or motion to set aside
20 a judgment is required to be filed within a specified time period
21 under Section 473 of the Code of Civil Procedure, the period within
22 which the action or motion to set aside the voluntary declaration
23 of paternity must be filed shall commence on the date that the court
24 makes an initial order for custody, visitation, or child support based
25 upon a voluntary declaration of paternity.

26 (2) The parent or local child support agency seeking to set aside
27 the voluntary declaration of paternity shall have the burden of
28 proof.

29 (3) Any order for custody, visitation, or child support shall
30 remain in effect until the court determines that the voluntary
31 declaration of paternity should be set aside, subject to the court's
32 power to modify the orders as otherwise provided by law.

33 (4) Nothing in this section is intended to restrict a court from
34 acting as a court of equity.

35 (5) If the voluntary declaration of paternity is set aside pursuant
36 to paragraph (1), the court shall order that the mother, child, and
37 alleged father submit to genetic tests pursuant to Chapter 2
38 (commencing with Section 7550). If the court finds that the
39 conclusions of all the experts, as disclosed by the evidence based
40 upon the genetic tests, are that the person who executed the

1 voluntary declaration of paternity is not the father of the child, the
2 question of paternity shall be resolved accordingly. If the person
3 who executed the declaration as the father of the child is not
4 excluded as a possible father, the question of paternity shall be
5 resolved as otherwise provided by law. If the person who executed
6 the declaration of paternity is ultimately determined to be the father
7 of the child, any child support that accrued under an order based
8 upon the voluntary declaration of paternity shall remain due and
9 owing.

10 (6) The Judicial Council shall develop the forms and procedures
11 necessary to effectuate this subdivision.

12 *SEC. 5. Section 7630 of the Family Code is amended to read:*

13 7630. (a) A child, the child's natural mother, a man presumed
14 to be the child's father under subdivision (a), (b), or (c) of Section
15 7611, an adoption agency to whom the child has been relinquished,
16 or a prospective adoptive parent of the child may bring an action
17 as follows:

18 (1) At any time for the purpose of declaring the existence of the
19 father and child relationship presumed under subdivision (a), (b),
20 or (c) of Section 7611.

21 (2) For the purpose of declaring the nonexistence of the father
22 and child relationship presumed under subdivision (a), (b), or (c)
23 of Section 7611 only if the action is brought within a reasonable
24 time after obtaining knowledge of relevant facts. After the
25 presumption has been rebutted, paternity of the child by another
26 man may be determined in the same action, if he has been made
27 a party.

28 (b) Any interested party may bring an action at any time for the
29 purpose of determining the existence or nonexistence of the father
30 and child relationship presumed under subdivision (d) or (f) of
31 Section 7611.

32 ~~(c) Except as to cases coming within Chapter 1 (commencing~~
33 ~~with Section 7540) of Part 2, an~~ An action to determine the
34 existence of the father and child relationship may be brought by
35 the child or personal representative of the child, the Department
36 of Child Support Services, the mother or the personal representative
37 or a parent of the mother if the mother has died or is a minor, a
38 man alleged or alleging himself to be the father, or the personal
39 representative or a parent of the alleged father if the alleged father
40 has died or is a minor.

(d) (1) If a proceeding has been filed under Chapter 2 (commencing with Section 7820) of Part 4, an action under subdivision (a) or (b) shall be consolidated with that proceeding. The parental rights of the presumed father shall be determined as set forth in Sections 7820 to 7829, inclusive.

(2) If a proceeding pursuant to Section 7662 has been filed under Chapter 5 (commencing with Section 7660), an action under subdivision (c) shall be consolidated with that proceeding. The parental rights of the alleged natural father shall be determined as set forth in Section 7664.

(3) The consolidated action under paragraph (1) or (2) shall be heard in the court in which the proceeding under Section 7662 or Chapter 2 (commencing with Section 7820) of Part 4 is filed, unless the court finds, by clear and convincing evidence, that transferring the action to the other court poses a substantial hardship to the petitioner. Mere inconvenience does not constitute a sufficient basis for a finding of substantial hardship. If the court determines there is a substantial hardship, the consolidated action shall be heard in the court in which the paternity action is filed.

(e) (1) If any prospective adoptive parent who has physical custody of the child, or any licensed California adoption agency that has legal custody of the child, has not been joined as a party to an action to determine the existence of a father and child relationship under subdivision (a), (b), or (c), or an action for custody by the alleged natural father, the court shall join the prospective adoptive parent or licensed California adoption agency as a party upon application or on its own motion, without the necessity of a motion for joinder. A joined party shall not be required to pay a fee in connection with this action.

(2) If a man brings an action to determine paternity and custody of a child who he has reason to believe is in the physical or legal custody of an adoption agency, or of one or more persons other than the child's mother who are prospective adoptive parents, he shall serve his entire pleading on, and give notice of all proceedings to, the adoption agency or the prospective adoptive parents, or both.

(f) A party to an assisted reproduction agreement may bring an action at any time to establish a parent and child relationship consistent with the intent expressed in that assisted reproduction agreement.

1 *SEC. 6. Section 7646.5 is added to the Family Code, to read:*
2 *7646.5. Notwithstanding Sections 7540, 7541, 7573, 7575, and*
3 *7646, any presumed father may bring a motion for genetic testing*
4 *to rebut the presumption of paternity within two years after he*
5 *becomes aware of facts that lead him to reasonably believe that*
6 *he is not the biological father of the child.*

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